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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/630,367 | 07/30/2003 | Eduardo Primo Yufera | 2429-1-024 | 8945 |

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KLAUBER & JACKSON
J. DAVID SMITH
411 CONTINENTAL PLAZA
HACKENSACK, NJ 07601

EXAMINER

LEVY, NEIL S

ART UNIT PAPER NUMBER

1615

DATE MAILED: 09/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/630,367

Applicant(s)

YUFERA ET AL.

Examiner

NEIL LEVY

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 8/25/04.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, it is not clear in what manner or means accessibility to insects is provided. There is no antecedent basis for "mineral". Claim 2 and 7 are omnibus claims as it is more than one sentence. Claims 6, 8, and 9 do not further limit 3, 2 "such as" (claim 9) is indefinite. See 14 "is it" seems to be reversed. Claim 15 is not clear as to what the weight is based on "per gram" of what? Claim 16 has no antecedent basis-5 does not require a second support.

Claim Rejections - 35 USC § 103

1. Claim 1-9, 14, 15, 17-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over GUNNER et al WO92/03055 and BRADLEY et al WO95/10597.

At GUNNER; see figure 8 a, b-the instant carrier vehicle, with spores of metarhizium or beuveria (page 7) and semi0chemical pheromone or attractant (page 11) for the species of interest, including flies. Spores/attractants are applied on an intermediate mat (page 7, figure 1, of agar) oil and minerals were not used.

BRADLEY shows advantageous oil (page 5) suspensions (page 8) of beauveriaconidia.....(page 6) on clay (page 7) inclusive of silicates-kaolin, bentonite. The spores/gm of clay are within the instant claim 18 ranges (example 9). Insect targets include flies (page 10).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize pest control means, to use any of art recognized means, as of the Gunner/Bradley granules modified as desired to increase

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stability, dispersibility, compatability of ingredients, processing ease, toxicity to handlers.

The amounts and proportions of each ingredient are result effective parameters chosen to obtain the desired effects. It would be obvious to vary the form of each ingredient to optimize the effect desired, depending upon the particular species and application method of interest, reduction of toxicity, cost minimization, enhanced, and prolonged, or synergistic effects.

Applicant has not provided any objective evidence of criticality, nonobvious or unexpected results that the administration of the particular ingredients' or concentrations provides any greater or different level of prior art expectation as claimed, and the use of ingredient for the functionality for which they are known to be used is not basis for patentability.

It is obvious to use the vehicle device of GUNNER to attract insects of interest, including flies to kill with beauveria spores, with improvement of BRADLEY showing powdered clays-silicates, and oil provide more storage stable spore preparations. The artisan would have been motivated to prepare the GUNNER cultures on oil/silicate powders in order to increase the length of time of use in the field of the preparations.

The instant invention provides well known old art recognized compounds, with well known art recognized effects, applied by well known art recognized methods to achieve improved control as is well known in the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619.

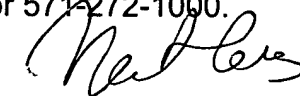
The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



NEIL LEVY
Primary Examiner
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